CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 98

SARAH PRINCE, APPELLANT,

vs.

COMMONWEALTH OF MASSACHUSETTS

APPEAL FROM THE SUPERIOR COURT, COUNTY OF PLYMOUTH, STATE OF MASSACHUSETTS

FILED JUNE 11, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 98

SARAH PRINCE, APPELLANT,

vs.

COMMONWEALTH OF MASSACHUSETTS

APPEAL FROM THE SUPERIOR COURT, COUNTY OF PLYMOUTH, STATE OF MASSACHUSETTS

INDEX.

	Original	Print
Record from Superior Court of Plymouth County	1	1
Defendant's substitute bill of exception	1	1
Complaint—Case No. 21069	1	1
Complaint—Case No. 21070	1	1
Complaint—Case No. 21071	2	2
Sections of statutes under which complaints issued	2	2
Defendant's motions to dismiss and/or quash	3	3
Defendant's motion for directed finding	5	5
Defendant's requests for rulings	7	7
Court's findings and rulings as to defendant's requests for rulings	9	9
Finding of guilty	10	10
Testimony of Betty M. Simmons	11	10
Sarah Prince	12	12
Henry Judson	13	12
Statement of facts	14	14
Order approving bill of exceptions	24	23
Record from District Court of Plymouth County	24	23
Complaint—Case No. 21069	24	23
Complaint—Case No. 21070	25	24
Complaint—Case No. 21071	26	25
Record of appeal—Case No. 21069	27	25
Record of appeal—Case No. 21070	29	27
Record of appeal—Case No. 21071	30	28

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 25, 1943.

	Original	Print
Record from Superior Court of Plymouth County—Continued		
Defendant's motions to dismiss and/or quash	31	29
Defendant's motion for directed finding	33	30
Defendant's requests for rulings	35	33
Docket entries	38	35
Rescript from Supreme Judicial Court	40	37
Opinion, Qua, J., Supreme Judicial Court	40-a	37
Motion for stay of execution of sentence (omitted in printing)	41	
Petition for appeals, statement, assignments of error and prayer for reversal	43	45
Order allowing appeal	86	48
Citation (omitted in printing)	88	
Bond on appeal (omitted in printing)	89	
Praecipe for transcript of record	94	49
Acknowledgment of service of appeal papers	96	50
Docket entries	97	51
Clerk's certificate to record (omitted in printing)	99	
Clerk's certificate as to timeliness	100	52
Statement of points to be relied upon and designation of parts of record to be printed	101	53
Appellee's designation of record	105	55
Order noting probable jurisdiction	107	56

[fol. 1]

IN SUPERIOR COURT OF PLYMOUTH COUNTY, COMMONWEALTH OF MASSACHUSETTS

No. 21069 Cr.

No. 21070 Cr.

No. 21071 Cr.

COMMONWEALTH OF MASSACHUSETTS

vs.

SARAH PRINCE

Defendant's Substitute Bill of Exceptions—Filed August 6, 1942

These were prosecutions on three complaints brought against the defendant for violation of General Laws, Ter. Ed., Chapter 149, sections 79, 80 and 81.

The complaints which issued thereunder are as follows:

COMPLAINT—No. 21069

Under Section 79. "To the District Court of Brockton holden at Brockton for the transaction of criminal business within the County of Plymouth George S. Perkins of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on the second day of January in the year of our Lord one thousand nine hundred and forty-two, on oath complains that Sarah Prince of Brockton in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred forty-one, at Brockton in said County of Plymouth did refuse to give to George S. Perkins, attendance officer of said Brockton, certain information, to wit: the name and age of Betty M. Simmons, a minor under the age of eighteen years, such information being required for the proper enforcement of the law."

COMPLAINT—No. 21070

Under Section 80. (Same in substance as first complaint except for the following:) "did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain

[fol. 2] articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully."

COMPLAINT—No. 21071

Under Section 81. (Same in substance as first complaint except for the following:) "was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law."

Sections of the statutes under which the complaints issued:

"Section 79. PENALTY FOR HINDERING INSPECTORS, ETC.—Any person who hinders or delays any authorized inspector or supervisor of attendance in the performance of his duties, or who refuses to admit to or locks out any such inspector or supervisor from any place which such inspector or supervisor is authorized to inspect, or who refuses to give to such inspector or supervisor such information as may be required for the proper enforcement of sections sixty to seventy-four, inclusive, shall be punished by a fine of not less than twenty-five nor more than two hundred dollars or by imprisonment for not more than two months, or both. (1913, 831, sec. 21; 1931, 394, sec. 151.)

"Section 80. PENALTY FOR FURNISHING ARTICLES TO BE ILLEGALLY SOLD BY MINORS ENGAGED IN STREET TRADES, OR AIDING IN VIOLATION OF SECTIONS 69-73.—Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both. (1913, 831, sec. 22.)

"Section 81. PENALTY ON PARENT OR GUARDIAN, ETC.—Any parent, guardian or custodian having a minor under his [fol. 3] control who compels or permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive, or knowingly certifies to any materially false statement for the purpose of obtaining the illegal em-

ployment of such minor, shall for a first offence be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; and for a subsequent offence by a fine of not less than five nor more than twenty-five dollars or by imprisonment for not more than ten days, or both. (1913, 831, sec. 23.)"

On February 10, 1942 the cases came on to be heard by appeal from the District Court of Brockton in the Superior Court for Plymouth County sitting at Brockton before George H. W. Hayes, a Justice of a District Court presiding in the Superior Court under provisions of Chapter 469 of Acts of 1923 and Amendatory Acts. The defendant pleaded "Not Guilty" to all three complaints and waived her right to trial by Jury. On February 11, 1942, at the completion of the trial, the defendant was found guilty on all three complaints. Before trial the defendant filed the following motion to dismiss and/or quash in all three cases, to wit:

DEFENJANT'S MOTIONS TO DISMISS AND/OR QUASH
(THREE CASES)

"And now comes the defendant in the above entitled action and moves that the same be dismissed and/or quashed and assigns for cause the following:

"1. That the complaints are invalid and do not state facts sufficient to constitute offenses under the law.

"2. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the First Amendment to the Constitution of the United States for they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship of both the defendant and the minor child and thus violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 4] "3. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Fourteenth Amendment to the Constitution of the United States, which Amendment had the effect of making said First Amend-

ment applicable to the States, as they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship both as to the defendant and the minor child and thus are violative of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States.

"4. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that they place unreasonable restraints on the exercise of Free Speech, Free Press, and Free Worship for they place children and minors under a certain age in an unreasonable classification.

"5. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they deprive children under certain ages of the privileges and immunities of citizens of the United States contrary to the Fourteenth Amendment to the Constitution of the United States in that minor children under the ages as prescribed in the various sections are denied the unencumbered right of pursuing an occupation or calling, which occupation or calling is granted unencumbered to those who are above the ages as prescribed in the statutes.

"6. With particular reference to General Laws Ter. Ed. Chapter 149 Section 79, said section is unconstitutional on its face and also as construed and applied in this case by reason that it punishes for failure to give evidence against one's self contrary to the Fifth Amendment to the Constitution of the United States.

"7. That General Laws Ter. Ed. Chapter 149 Section 60 through 83, as amended, cannot be applied to the facts in this case and therefore the defendant is Not Guilty on all complaints.

[fol. 5] "8. That there is insufficient evidence to warrant a finding of Guilty on any of the Complaints and therefore the defendant is Not Guilty on all the Complaints.

By her attorneys,

—Alfred A. Albert, Hayden Covington."

The Court denied the motion. The defendant seasonably objected and took exceptions to the Court's denial of the motions to dismiss and/or quash.

At the conclusion of the Commonwealth's evidence the defendant renewed her motions to dismiss and/or quash as to all three complaints and filed her motion for directed finding on all three complaints, as follows, to wit:

"DEFENDANT'S MOTION FOR DIRECTED FINDING

(THREE CASES)

"And now comes the defendant in the above entitled action and moves that the Court direct a finding in her favor on all three complaints, and assigns for cause thereof the following:

"1. That the complaints are invalid and do not state facts sufficient to constitute offenses under the law.

"2. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the First Amendment to the Constitution of the United States for they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship of both the defendant and the minor child and thus violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

"3. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Fourteenth [fol. 6] Amendment to the Constitution of the United States, which Amendment had the effect of making said First Amendment applicable to the States, as they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship both as to the defendant and the minor child and thus are violative of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States.

"4. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their

face and also as construed and applied in this case by reason that they operate so as to violate the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that they place unreasonable restraints on the exercise of Free Speech, Free Press, and Free Worship for they place children and minors under a certain age in an unreasonable classification.

"5. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they deprive children under certain ages of the privileges and immunites of citizens of the United States contrary to the Fourteenth Amendment to the Constitution of the United States in that minor children under the ages as prescribed in the various sections are denied the unencumbered right of pursuing an occupation or calling, which occupation or calling is granted unencumbered to those who are above the ages as prescribed in the statutes.

"6. With particular reference to General Laws Ter. Ed. Chapter 149 Section 79, said section is unconstitutional on its face and also as construed and applied in this case by reason that it punishes for failure to give evidence against one's self contrary to the Fifth Amendment to the Constitution of the United States.

"7. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, cannot be applied to the facts in this case and therefore the defendant is Not Guilty on all complaints.

"8. That there is insufficient evidence to warrant a finding of Guilty on any of the Complaints and therefore the defendant is Not Guilty on all the complaints.

[fol. 7] "9. That upon all the evidence and the law taken in the most unfavorable light to the defendant, there is insufficient evidence to warrant her conviction on any of the complaints.

By her attorneys, Alfred A. Albert, Hayden Covington".

Upon inquiry by the Court if the defendant rested, the defendant refused to rest, so the Court declined to rule upon these motions.

The defendant, at the conclusion of all the evidence, again renewed her motions to dismiss and/or quash, and her motion for directed finding. Both motions were denied and the defendant seasonably objected and took exceptions to the Court's denial of both motions.

At this juncture the defendant filed her requests for rulings as follows, to wit:

DEFENDANT'S REQUESTS FOR RULINGS

(THREE CASES)

"And now comes the defendant in the above entitled cases and makes the following requests for rulings.

"1. That upon all the evidence the defendant is Not Guilty.

"2. That upon all the law the defendant is Not Guilty.

"3. That upon all the evidence the Court must find that the cause of the defendant's arrest were the acts of the defendant and the minor child involved in engaging in their way of worship.

"4. If the court finds that the cause of the defendant's arrest were the acts of the defendant and the minor child in that they were engaging in their way of worship, then the court must rule that General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, do not apply to this defendant as the court should not impute to any legislation a purpose of action against religion.

Holy Trinty Church v. U. S., 143 U. S. 457.

[fol. 8] "5. That there is insufficient evidence to warrant a finding that the defendant was to receive or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines or other literature to the minor child.

"6. If the Court should find that there is insufficient evidence to warrant a finding that the defendant was to receive or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines or other literature to the minor child, then the Court must find the defendant Not Guilty.

"7. That upon all the evidence the Court must find that the defendant did not furnish magazines or other literature

to the minor child for the purpose of having said minor child sell said magazines or other literature.

"8. If the Court finds that the defendant did not furnish magazines or other literature to said minor child for the purpose of having said minor child sell said magazines or other literature, then the Court must find the defendant Not Guilty.

"9. If upon all the evidence the Court should find that the defendant did furnish to Betty M. Simmons magazines or other literature for the purpose of having said Betty M. Simmons sell said magazines or other literature contrary to the law, then the Court must find the defendant Not Guilty as it is immaterial whether said Betty M. Simmons was to sell, distribute freely or receive contributions for said magazines or other literature.

Lovell v. Griffin, 303 U. S. 444;
Hammon v. Haverhill, 100 Fed. (2) 82.

"10. That there is insufficient evidence to warrant a finding that the defendant knew that the minor child, Betty M. Simmons, intended to sell magazines or other literature unlawfully.

"11. If the Court should find that the defendant did not furnish Betty M. Simmons magazines or other literature knowing that said Betty M. Simmons intended to sell the same unlawfully, then the Court must find the defendant Not Guilty of the violation of General Laws Ter. Ed. Chapter 149 Section 80.

[fol. 9] "12. That there is insufficient evidence to warrant a conviction under General Laws Ter. Ed. Chapter 149 Section 79, and there is insufficient evidence to warrant a conviction under General Laws Ter. Ed. Chapter 149 Section 81.

"13. That upon all the evidence and the law the Court must find that General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case because they operate to deprive the defendant and the minor child of their rights of Free Speech, Free Press and Free Worship in contravention of the Due Process, the Equal Protection of the Laws and Privileges and Immunities Clauses of the

Fourteenth Amendment to the Constitution of the United States.

By her attorneys, Alfred A. Albert, Hayden Covington"

COURT'S FINDINGS AND RULINGS

At the conclusion of argument by both counsel the Court made the following findings and rulings as to the defendant's requests for rulings:

Numbers 1, 2, 3, 5, 7, 9, 10, 12 and 13 denied.

The defendant seasonable objected and took exceptions to the Court's denial of numbers 1, 2, 3, 5, 7, 9, 10, 12 and 13.

The Court on Number 4: "On number 4, I do not find that the cause of the defendant's arrest was that they, the defendant and Betty M. Simmons, were engaging in their way of worship. I do not so find. Worship in this case, religion in this case, Christianity in this case, are not the questions at issue."

The Court on Number 6: "On 6, I find that the magazines were for sale. Offer for sale is the offering of an article for a price. I find that the magazines were offered for a price.

"Mr. Albert: 6 says that if the court should find that there is insufficient evidence to warrant a finding that the [fol. 10] defendant was to receive or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines. Do you find there was a profit to be received?

"Court: I do find there was sufficient evidence to warrant a finding that the defendant was to receive a price for these magazines being sold by this child. What she did do with it afterwards I find is of no importance. Whether she made a profit or not is not before me."

The Court on Number 8: "On 8, I do not find as requested, but do find that the defendant did furnish magazines to said Betty M. Simmons, a minor of the age of nine years, for the purpose of having the minor child sell the magazines."

The Court on Number 11: "On 11, I do not find as requested, but do find the magazines were furnished by the defendant to Betty M. Simmons, knowing that Betty M. Simmons intended to sell the same."

The Court denied requests on numbers 4, 6, 8 and 11. The defendant seasonably objected and took exceptions to the Court's denial of requests numbers 4, 6, 8 and 11.

Finding of Guilty

The Court found the defendant Guilty on all three complaints, as follows: "I will say that the question of denomination, sect or religion is not the question at issue. Whether the child was selling the magazines that have been mentioned, or some other magazine, to illustrate, the Ladies Home Journal, the child is prevented from doing that under the statute; that I disregard the substance or the contents of the magazines from the standpoint of the question of religion. The question of the practice of religion is not before me. Therefore, I am passing upon the sole question of whether Sarah Prince did furnish to Betty Simmons magazines, knowing that Betty Simmons was to sell the magazines, unlawfully; secondly, being the custodian of Betty Simmons, a minor, of nine years of age; did permit the work contrary to law, and third, did refuse to give information to an attendance officer as required by the statute. I cannot on the evidence before me make any other finding than guilty on all three."

The defendant seasonably objected and took exceptions to the Court's findings of "Guilty."

[fol. 11] During the course of the trial the defendant seasonably objected and took exceptions to the court's refusal to admit certain testimony and evidence, as follows, to wit:—

1. Cross examination of Betty M. Simmons, the minor mentioned in the Complaints, Commonwealth witness.

"Q. Are you one of Jehovah's Witnesses, Betty?
"A. Yes.
"Q. And as such are you are an ordained minister?
"A. Yes.

"Mr. Clark: I object.
"Mr. Albert: Let us see if she knows what it means.
"Mr. Clark: I still object.
"Court: I don't know whether this is material.
"Mr. Clark: I want to make it understood that the State does not care whether this girl is an ordained minister or

not. The only position the Commonwealth takes is that she is a minor under 18 years of age.

"Court: As a preliminary question I will allow you to ask the question.

"Q. Just what is that, Betty—what is an ordained minister?

"Court: I will exclude that.

"Mr. Albert: The court will note my exception.

"Court: I will save your rights.

"Mr. Albert: I will submit as offer of proof that this testimony would show she is an ordained minister and as such to preach the gospel by the distribution of literature on the streets, therefor- coming within the provisions of my motions with regard to freedom of worship."

2. Further Cross-examination of said Betty M. Simmons.

"Q. You state that you distribute this literature because God commands you to do so and because you love the Lord, is that correct?

"A. Yes.

[fol. 12] "Q. What will happen if you don't distribute this literature?

"Mr. Clark: I object.

"Court: Excluded.

"Mr. Albert: The court will note my exception. This evidence would show that according to this girl's conscience if she does not do this work she will be condemned to everlasting destruction at Armageddon, and she conscientiously and sincerely believes this.

"Court: The question is excluded. I will save your rights on it."

3. Further cross examination of said Betty M. Simmons.

"Q. Did you ever during that December 18 give any away? (Referring to literature)

"A. No.

"Q. Do you ever give any away?

"A. Once in a while.

"Q. Suppose I came up to you on the street and said 'I cannot afford 5¢, will you give me one'?

"Mr. Clark: I object.

"Court: Excluded.

"Mr. Albert: The court will note my exception.
"Court: I will save your rights."

4. Direct examination of Sarah Prince, Defendant.

"Q. What is your full name?
"A. Sarah Ann Price.
"Q. Where do you live?
"A. I reside at 1146 Court Street.
"Q. And that is in the City of Brocktoh?
"A. Brockton, Massachusetts.
"Q. How long have you resided there?
"A. Practically all my life. I am 31.
[fol. 13] "Q. And what is your occupation?
"A. My occupation is of an ordained minister of the gospel. I am fully consecrated to do the will of Almighty God and obey his commandments laid down in the Bible.
"Q. What are those commandments?
"A. Isa. 43:——

"Mr. Clark: I object.
"Court: Excluded.
"Mr. Albert: The court will note my exception. I will submit as offer of proof that this woman obeys the commandment of God to preach the gospel from house to house, on the street, and it is her conception of her way of worship.
"Court: I will save your rights."

5. Direct examination of Henry Judson, defendant's witness.

"Q. Do you know of your own personal knowledge the purposes for which the Watch Tower Bible and Tract Society is incorporated?

"Mr. Clark: I object.
"Court: Excluded.
"Mr. Albert: The court will note my exception. The purposes for the question is the evidence would show that the Watch Tower Bible & Tract Society is a charitable corporation, incorporated for the purposes of aiding the work of Jehovah God in bringing the message of good will through the publication of literature and pamphlets to the people, and for the further purpose that there should be no com-

mercial—or that there is no commercial, pecuniary or personal gain involved in the set-up of the corporation.

"Court: I will say to your last statement that I would feel that he could not of his own statement prove the object for which it is incorporated when it can be shown by documentary evidence.

"Mr. Albert: It is from the State of New York.

[fol. 14] "Court: Regardless of that I will exclude the question, and will save your rights."

6. Direct examination of Henry Judson, defendant's witness.

"Q. Did you supervise the receipt of contributions and sending of them to the Watch Tower Bible & Tract Society?

"A. I supervised that, too, yes.

"Q. Will you explain to the court, please, once again—I'm not sure I got this definitely—just how a person in the position, let us say, of the defendent in this case, how she makes her contribution, and just exactly what happens to the money thereafter.

"Mr. Clark: I object to that. He was not there.

"Mr. Albert: If he knows of his own personal knowledge——

"Court: If he has any knowledge on this particular case, he may testify as to what happened in this particular case to money received by this woman. What is the question again? (The question was read.) I will exclude it in that form.

"Mr. Albert: The court will note my exception. I will submit as offer of proof that the evidence would show that the witness would testify that the contribution received from the various members of Jehovah's Witnesses by the local company servant is a contribution received for literature, and that that contribution goes to the Watch Tower Bible & Tract Society for the purpose of printing additional literature, that there is only one contribution made for the literature that any of Jehovah's Witnesses themselves individually receive, and the purpose of that is to show, of course, that there is no profit and no commercial or pecuniary benefits in the work of Jehovah's Witnesses."

Statement of Facts

Defendant's Counsel agreed that on December 18, 1941, Sarah Prince was the custodian of Betty M. Simmons.

There was evidence that on December 18, 1941 Betty M. Simmons was in her ninth year and attending the Shaw School in Brockton; that she was living with the defendant, [fol. 15] her aunt, in Brockton; that she is one of Jehovah's Witnesses and as such an ordained minister of Jehovah God. That about 8:45 p. m. on December 18, 1941, she was with the defendant on the corner of Legion Parkway and Main Street, public streets, in the City of Brockton. Suspended from her shoulder she carried a magazine bag on which was printed the following: "Watchtower explains the Theocratic Government" "5¢ a copy". In the bag were copies of the publications "Watchtower" and "Consolation". In one of her hands she held up a copy of each so that passersby could see them, and saying at the same time "Remedy for World Distress" "Read the Watchtower".

Betty M. Simmons testified that she was on the street distributing literature because "I love the Lord and He commands us to" and because it was her way of worship. Under cross-examination she testified that she was taking contributions of five cents for both magazines or more if people should give more, that she was not selling them, and that on the night in question she did not receive any contributions nor did she give any magazines away although once in a while at some previous time she had given some away; that when she received any contributions she never kept any of the money but gave it all to her aunt, the Defendant; that before she went on the street that night the defendant did not want to take her, but that she, Betty, started to cry and wanted to go; that upon her own request the defendant gave her the bag and magazines.

There was testimony from the defendant that she did not tell her, Betty M. Simmons, to get contributions but did tell her where to stand. While they were on the street, Mr. Perkins, the Supervisor of Attendance of the Public Schools of Brockton came over and asked the defendant for Betty's name, and the defendant said, "She belongs to me and you know her. She attends the Shaw School", and Mr. Perkins replied, "I am sorry, I don't know her". Then Mr. Perkins asked Betty what her name was and the defendant said, "Tell him to ask your aunt". Sarah Prince

did not tell Mr. Perkins the child's name. Mr. Perkins did not ask either the defendant or Betty M. Simmons anything about age.

George S. Perkins, Commonwealth Witness, testified that he was the Supervisor of Attendance of the Public Schools [fol. 16] of Brockton, appointed on April 1, 1931, and that his duties "Are to investigate all cases pertaining to school attendance, to enforce the law on minors, and in street trades to insist on enforcement of the Child Labor Laws:" that he knew the defendant two years previous to December 18, 1941 but he did not know Betty M. Simmons prior to December 18, 1941; that on the day in question about 8:45 p. m. he observed the defendant on the southwest corner of Legion Parkway; with the defendant was Betty M. Simmons who was standing about twenty feet away. The little girl was holding up in her hand so that pedestrians could see, a copy of "Watchtower" and "Consolation" magazines, which were in a heavy cellophane protective cover, and suspended from her shoulder was a canvas magazine bag and on that canvas bag in bold type was printed "Watchtower and Consolation 5¢ per Copy", that he stepped up to the little girl and the defendant came up. The following then took place: (Quoting from the testimony of Mr. Perkins)

"A. The defendant came up and I then turned to the defendant and asked her what the little girl's name was. The defendant answered—she replied, 'You know her, she attends the Shaw School.' I says, 'I'm sorry but I don't know her' and I then turned to the little girl and asked her her name. She said, 'Ask my aunt.' So I said, 'Mrs. Prince, please, this is necessary for me to ask you this. Please let me have the little girl's name.' She did not tell me.

"Q. At some time did you ask the little girl her name in the presence of the defendant?

"A. Yes. I then turned to the little girl and asked her name again. She did not answer.

"Q. What did the defendant say?

"A. She said, 'Don't tell him. Tell him to ask your aunt'.

"A. I asked the defendant if she furnished the magazines and she replied, 'Sure, I did. And neither you nor anybody else can stop me'.

"Court: What did you say to her?

"A. I said, 'This is my job, Mrs. Prince, and I told you before that you should not furnish magazines and allow your children out on the street selling.' I said, 'About a year ago I warned you and your son, Donald and William, [fol. 17] were out selling, and I took the magazines away from them at the time and went to your home and you were not at home, and I went to your sister's house and talked with you for a good half hour explaining the law to you, I even let you read the law.' I said, 'I am surprised you have this little girl only eight years old out selling magazines on the street.'

"Q. What did she say?

"A. She said, 'Well, I have a right to and you're nothing but an attendance officer, and if you go get a uniform with brass buttons perhaps I will listen to you.' Then she said, 'We're quitting now and going home. I have to get the little girl to bed' and she didn't even give me the name at the time. It was then about quarter of nine.

"Q. At any time during that conversation in respect to your question as to what the little girl's name was, did Mrs. Prince ever give you the girl's name?

"A. No.

"Q. And during that period whether or not she refused in so many words to give the girl's name?

"A. Yes. She refused."

The defendant also said, "You know her, she attends the Shaw School", to which Perkins said, "I'm sorry but I don't know her". He then asked the little girl her name, but the little girl said, "Ask my aunt". He then asked the defendant, "Mrs. Prince, please, this is necessary for me to ask you this. Please let me have the little girl's name", but the defendant insisted that Mr. Perkins knew the name. He again asked the little girl her name, but the defendant said, "Don't tell him. Tell him to ask your aunt." The defendant told him, Mr. Perkins, that she had furnished the magazines to the child. He told the defendant that he had spoken to her about a year before relative to other children and that he told her about the law, and the defendant said she, Betty had a right to do what she, Betty, was then doing. The defendant at no time on December 18, 1941 gave him the little girl's name; that he

found out the girl's name by calling on the phone the Shaw [fol. 18] School on the following day and by giving Betty's description; that in October of 1940, he told the defendant that it was against the Massachusetts law to allow children on the street selling magazines; that he had shown her the law applicable thereto and had written her a letter explaining the law, and that since then up to December 18, 1941, though he had seen the defendant several times, they had never spoken further about the matter. Further testimony was to the effect that at the time of his conversation with the defendant on December 18, 1941, Mr. Perkins did not take any of the magazines or the bag from the defendant or the child, but a few days later he purchased copies of "Watchtower" and "Consolation" in Quincy. He stated that on December 18, 1941, further conversation with the defendant was had to the effect that the defendant told him the child was on her own, that she had cried, and that the defendant let the child come. Perkins testified that he did not ask the defendant nor the child what happened with any money that either might receive, nor whether there was any profit or pecuniary benefit being realized. Perkins further stated that the complaint for permitting Betty M. Simmons to work contrary to the law was that no girl under eighteen could be on the street with literature. He did not hear Betty M. Simmons say "5¢ per copy". A few minutes after talking to Perkins on December 18, 1941, the defendant walked away from Mr. Perkins and was joined by a Mr. Flint. Mr. Perkins came up and some discussion was had about the magazine work to the effect that the little girl was not selling them but was receiving contributions and that there was no profit involved. Perkins further testified that on October 4, 1940, he mailed the defendant a letter advising her of the law in connection with her son, William Prince, to the effect that boys under 12 and girls under 18 years of age could not offer for sale newspapers or magazines, and that whoever furnishes or sells to minors with knowledge that the minor intends to sell such articles was violating the law.

Copies of "Watchtower" and "Consolation" were introduced into evidence and they were marked. It was agreed that these were similar to those being carried by Betty M. Simmons on December 18, 1941, and that they were introduced and admitted "for any purposes applicable to these complaints". It was also agreed that Main Street and

Legion Parkway were public ways. The Commonwealth then rested.

[fol. 19] The defendant, Sarah Prince, testified that she resided in Brocton practically all her life, 31 years, and that she was one of Jehovah's Witnesses and as such an ordained minister of the gospel "fully consecrated to do the will of Almighty God and obey his commandments laid down in the Bible", and that she had been an ordained minister for about five years as evidence as to her occupation. An identification card showing such authority was introduced in evidence and marked. The card purported to show that she was ordained by Jehovah God by taking her stand according to Isaiah 61:1, 2, where it is written, "The spirit of Jehovah God is upon me because Jehovah has annointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives and the opening of the prisons to them that are bound; to proclaim the acceptable year of our Lord, the day of vengeance of our God, and to comfort all that mourn." Also at Isaiah 43:10-12, it is written, "Ye are my witnesses, saith Jehovah, that I am God; that ye may know and believe and understand that I am He; before me there was no god formed, neither shall there be after me; I, even I, am Jehovah, beside me there is no god. I have declared and saved and showed when there was no strange god among you, therefore ye are my witnesses, saith Jehovah, that I am God."

She further testified to become an ordained minister that it was not necessary to go to school; that she was annointed and ordained as a minister by Jehovah God; and that one became an ordained minister by taking his or her stand on the side of Jehovah God and Christ Jesus.

On December 18, 1941 she was on Legion Parkway walking between Main and High Streets. Betty M. Simmons was with her and both had the magazines "Watchtower" and "Consolation" and magazine bags; that before they had come on the street "The children asked to go and I said no and started out myself, and they started to holler and cry so I said 'Come along', but I never take them out at night." That Betty M. Simmons asked for the bag and literature and that she gave them to her; that on the night in question neither she nor Betty M. Simmons received any contributions nor gave any literature away. When Betty M. Simmons did receive a contribution it was given to the

defendant, who in turn gave it over to Roger Flint, Com-
[fol. 20] pany Servant, the individual in charge of local distribution. For such sums turned in or personal contributions she would receive more literature, and if she had no contribution she could receive the literature anyway, by asking for it; that she did not do the work for profit nor pecuniary gain, that the "5¢ per copy" on the magazine bag meant "you can contribute 5¢ and have a copy. If you have not the 5¢ and are interested in reading, we will give it to you. It is not a selfish work or carried on for any pecuniary gain." The Watch Tower Bible & Tract Society, Inc. is the publisher of the literature and the connection that Jehovah's Witnesses have with the corporation is that the corporation "is the channel Jehovah God is using to divide the people, to warn the people of good will and show them the way of safety and refuge under His Kingdom. If they don't go in they will all die at Armageddon at the destruction of Christ Jesus." The literature "Watchtower" and "Consolation" were published in pursuance of this belief and she received some of such literature from Roger Flint and gave some to Betty Simmons on December 18, 1941. The defendant further testified "Jehovah God has commanded the people to come out of the religions, Catholic, Protestant, Jew or Gentile. That is the first thing that is going down, and all who are in with religion will perish with religion. It is on its last skids now. That is why we are on the street corners. Christianity will survive, not religion. The destruction of the wicked at that time will be tremendous, far exceeding anything in human history. The nations of Christendom are forgetters of God. His name has been blasphemed and reproached down through the ages. But He says, 'They shall know that I am Jehovah'. For no other reason was I on the street corner, and my children, but to tell the people of the one place of safety, that is in the kingdom of God under Christ that we have prayed for. Most people pray automatically for that kingdom."

At about 20 minutes of 9 on December 18, 1941 while the defendant was on the street Mr. Perkins approached her. The defendant testified, "I was doing this street work, preaching the gospel; Mr. Perkins approached my girl standing close to me, then he turned to me and I thought it was some one who wanted literature, so I turned around and there he stood. He said, 'You know it is very late and

this child is out and she should be home in bed.' I said, [fol. 21] 'Mr. Perkins, we have been through this before. You know this child is exercising her God-given right and her constitutional right to preach the gospel, and no creature has a right to interfere with God's commands.' He said, 'I'll take you back up to the court.' I said, 'Go ahead, but it will be for a testimony against you.' That is when he said to me, 'Baloney'. Then he talked a little while longer and harped on this and that about school and I did not answer him. Then he said, 'I will give you five minutes to get off the street' and I told him five minutes was all I needed, it was about 20 minutes of 9 then. He said, 'I can have you arrested.' I said, 'These other children are out shopping with their parents so why bother me?' He said, 'I have a right to arrest you.' I said, 'Go ahead, arrest me.' He said, 'You will hear from me.' I went off at quarter of 9 and a little way up the street I met Mr. Flint coming across the street. I was talking to Mr. Flint about what Mr. Perkins said, and in the meantime he (Mr. Perkins) sneaked up and butted in the conversation. I introduced the two men, I said, 'Mr. Flint, Mr. Perkins the truant officer.' Then he said to Roger, 'These children can't do this work.' Roger told him they have a constitutional right and a God-given right to do it, and no human has a right to interfere. They talked a little while longer, then I said, 'I'm not going through this any more. We've been through it time and time again. I'm going home and put the little girl to bed.' Then I said 'Goodnight' to both of them and went home."

Before Roger Flint appeared, Perkins when talking to Sarah Prince said, "What is this little girl's name?" The defendant replied, "You know her name, you know all of us." Perkins then said to Betty, "What is your name?" The defendant said, "Tell him to ask your aunt." Sarah Prince then testified that she did not say to Mr. Perkins "Don't tell him"; that she was not trying to evade answering Mr. Perkins, but that because Perkins had been to the house before about the children on flag salute cases, when all the children were present, therefore she had reason to believe he knew the child's name. The defendant testified that the only time prior to December 18, 1941 she and Perkins discussed the matter of children distributing literature was in October of 1940 when he had taken away some of the children's books, that at that time he did not tell her it

was against the law to allow children to distribute or sell literature, that she had never received from him or any [fol. 22] one else any kind of notice, written or oral, about the law until December 18, 1941, and that the first letter she received was dated December 26, 1941. This letter was admitted into evidence and states the law relative to sale or distribution of papers and magazines by children as hereinbefore stated.

She further testified that on December 18, 1941, she had Betty with her at the corner of Legion Parkway and Main Street, Brockton, that she furnished the magazines to Betty and that Betty was going up the street with one hand extended with a magazine in it and she had a bag suspended from her neck on which appeared in print "Watchtower and Consolation, 5¢ a copy". That the defendant had known Mr. Perkins before and that at no time in response to Perkins' question did she give him the name of Betty M. Simmons.

Roger M. Flint was called by the defense, and testified that he was one of Jehovah's Witnesses and as such an ordained minister of Jehovah God. His identification card was admitted into evidence. On December 18, 1941 and at the time of the trial he was company servant of the Brockton Company of Jehovah's Witnesses and had charge of the distribution of literature in Brockton. He gave the literature in question to Sarah Prince in return for her contribution, "a small amount to help cover cost of printing." The money Flint received from contributions received on literature he sent to the Watch Tower Bible & Tract Society, Inc. in Brooklyn, N. Y. where additional literature is printed. He receives no profit from these receipts. Others of Jehovah's Witnesses voluntarily contribute for his support and maintenance. He testified that there is no profit, "It is a Christian work, a charitable work. Jehovah's Witnesses lose much money getting this message to people of good will. God has commanded us to go to the people. At Matthew 24:14 it is written, 'And this gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come.' It is our privilege in obedience to the Lord's commandments to faithfully obey him without any profit whatsoever.

The last witness, Henry G. Judson, for the defendant, testified that he was one of Jehovah's Witnesses for thirty-

three years and as such an ordained minister, "spending full time in the Lord's service." His identification card was admitted into evidence. He testified that he was serv- [fol. 23] ing Watch Tower Bible & Tract Society, Inc. in a special capacity, but that for many years he was a zone servant aiding companies of Jehovah's Witnesses; that he had supervised the receipt of contributions and the sending of them to the Watch Tower Bible & Tract Society, that said contributions received on literature was sent by the local companies to the Watch Tower Bible & Tract Society, Inc. where it went into the general fund, which fund is used "to carry forward the work of publishing books, booklets, and the distribution through the countries of the world." The Witness was shown Exhibit "Consolation" in which appeared the following: "5¢ a copy, $1.00 a year, $1.25 in Canada and Foreign Countries." The witness testified that the printing on the "Consolation" magazine "5¢ a copy, $1.00 a year, $1.25 in Canada and Foreign Countries" meant "A person may have received his first copy free or he may have contributed for his first copy. If he saw something there that interested him, for that amount or any more he may care to give, he would receive the Consolation magazine every two weeks." The defendant then rested.

The court on its finding of "Guilty" levied a fine of $25 on the first complaint and $10 on each of the other two complaints. On February 11, 1942 execution was deferred until February 19, 1942 and the defendant's motion to extend the time for filing her bill of exceptions up to and including February 19, 1942 was assented to, filed and allowed. On February 19, 1942 the defendant's motion for stay of execution pending final determination of her bill of exceptions was allowed and her motion for a further extension of the time for filing her bill of exceptions up to and including February 26, 1942, was assented to, filed and allowed.

There was no evidence that any attempt was made by any person to prevent the defendant herself from selling or distributing the magazines, the contention of the Government is that the defendant could not give or distribute the magazines to a minor, as defined in the complaints, for the purpose of having the minor child sell or offer for sale the magazines. That the question at issue is whether there was a violation of the Child Labor Law.

The foregoing statement contains all of the material evidence necessary for a determination of the defendant's [fol. 24] exceptions. The exhibits introduced in evidence are to be transferred with the record to the Supreme Judicial Court. The defendant being aggrieved by the court's opinion, judgment and rulings as hereinbefore stated, brings this bill of Exceptions and prays that it may be allowed.

Respectfully submitted, Alfred A. Albert, Hayden C. Covington.

Assented to: Robert G. Clark Jr., Deputy District Attorney for the Commonwealth of Massachusetts.

ORDER APPROVING BILL OF EXCEPTIONS

Endorsed:

"August 6, 1942 Bill of Exceptions Approved George H. W. Hayes Justice of a Dist Ct presiding in the Superior Court under provisions of Chap 469 Acts of 1923 and Amendatory Acts."

[File endorsement omitted.]

IN DISTRICT COURT OF PLYMOUTH COUNTY

No. 21069

COMPLAINT

To the District Court of Brockton, holden at Brockton, for the transaction of criminal business within the County of Plymouth.

George S. Perkins of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on the second day of January in the year of our Lord one thousand nine hundred and forty-two on oath complains that.

[fol. 25] Sarah Prince of Brockton, in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred and forty-one at Brockton in said County of Plymouth, did refuse to give to George S. Perkins, attendance officer of said Brockton,

certain information, to wit: the name and age of Betty M. Simmons, a minor under the age of eighteen years, such information being required for the proper enforcement of the law.

George S. Perkins, Complainant.

PLYMOUTH, ss:

Received and sworn to this second day of January in the year of our Lord one thousand nine hundred and forty-two.

Harry W. Sherburne, Assistant Clerk. (Seal.)

A true Copy. Attest: Harry W. Sherburne, Assistant Clerk of said Court.

IN DISTRICT COURT OF PLYMOUTH COUNTY

No. 21070

COMPLAINT

To the District Court of Brockton, holden at Brockton, for the transaction of criminal business within the County of Plymouth.

George S. Perkins of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on the second day of January in the year of our Lord one thousand nine hundred and forty-two on oath complains that [fol. 26] Sarah Prince of Brockton, in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred and forty-one at Brockton in said County of Plymouth, did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully.

George S. Perkins, Complainant.

PLYMOUTH, ss:

Received and sworn to this second day of January in the year of our Lord one thousand nine hundred and forty-two Before said Court.

Harry W. Sherburne, Assistant Clerk. (Seal.)

A true Copy. Attest: Harry W. Sherburne, Assistant Clerk of said Court.

IN DISTRICT COURT OF PLYMOUTH COUNTY

COMPLAINT—No. 21071

To the District Court of Brockton, holden at Brockton, for the transaction of criminal business within the County of Plymouth.

George S. Perkins of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on [fol. 27] the second day of January in the year of our Lord one thousand nine hundred and forty-two on oath complains that

Sarah Prince of Brockton, in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred and forty-one at Brockton in said County of Plymouth, was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law.

George S. Perkins, Complainant.

PLYMOUTH, ss.

Received and sworn to this second day of January in the year of our Lord one thousand nine hundred and forty-two Before said Court.

Harry W. Sherburne, Assistant Clerk. (Seal.)

A true Copy. Attest: Harry W. Sherburne, Assistant Clerk of said Court.

RECORD OF APPEAL—No. 21069

IN DISTRICT COURT OF PLYMOUTH COUNTY

COMMONWEALTH

VS.

SARAH PRINCE

On Complaint of George S. Perkins for Refusing Information to Attendance Officer (Section 79, Chapter 149).

By Virtue of a Summons, duly issued, upon said complaint, a copy of which complaint is hereto annexed, the said [fol. 28] Defendant is before the District Court of Brockton, at Brockton, in said County of Plymouth, on the fifth

day of January A. D. 1942, and the said complaint is read to her and being asked whether she is guilty of the offense there charged upon her says she is not guilty, and thereupon the further consideration of said complaints is by said court continued to the nineteenth day of January A. D. 1942 at which last mentioned date after hearing divers witnesses duly sworn to testify the truth, the whole truth, and nothing but the truth, and fully understanding the defence of said Defendant, it is considered by said Court that she is guilty of the offence charged against her, it is therefore ordered by the said Court that the Defendant forfeit and pay the sum of twenty-five Dollars to and for the use of the City of Brockton, and that she stands committed until said sentence be complied with.

And said Defendant was thereupon informed of her right to appeal.

From which conviction the said Defendant appeals to the Superior Court next to be holden at Plymouth, within and for the County of Plymouth aforesaid, and is ordered to recognize to the Commonwealth in the sum of $100.00 for her personal appearance before the Superior Court, to be holden at Plymouth, within and for the County of Plymouth, on the first Monday of February next, then and there to prosecute her said appeal, and also in a like manner personally to appear at any subsequent sitting of said Superior Court, to which the case is continued, if not previously surrendered and discharged, and so from time to time, until the final sentence, order or decree of said Superior Court thereon and to abide such final sentence, order or decree, and not depart without leave, and in meantime to keep the peace and be of good behavior, and that she stand committed until this order be complied with.

And the Defendant complies with this order,—

Attest: Harry W. Sherburne, Assistant Clerk of Said Court. (Seal.)

A true copy,—Attest:

Harry W. Sherburne, Assistant Clerk of said Court.

[fol. 29] In District Court of Plymouth County

Record of Appeal—No. 21070

Commonwealth

vs.

Sarah Prince

On complaint of George S. Perkins for furnishing magazines to minor (Section 80, Chapter 149).

By virtue of a summons, duly issued, upon said complaint, a copy of which complaint is hereto annexed, the said Defendant is before the District Court of Brockton, at Brockton, in said County of Plymouth, on the fifth day of January A. D. 1942, and the said complaint is read to her and being asked whether she is guilty of the offence there charged upon her says she is not guilty, and thereupon the further consideration of said complaint is by said court continued from to the nineteenth day of January A. D. 1942 at which last mentioned date after hearing divers witnesses duly sworn to testify the truth, the whole truth, and nothing but the truth, and fully understanding the defence of said Defendant, it is considered by said Court that she is guilty of the offence charged against her, it is therefore ordered by the said Court that the Defendant forfeit and pay the sum of Ten Dollars to and for the use of the City of Brockton, and that she stands committed until said sentence be complied with.

And said Defendant was thereupon informed of her right to appeal.

From which conviction the said Defendant appeals to the Superior Court next to be holden at Plymouth, within and for the County of Plymouth aforesaid, and is ordered to recognize to the Commonwealth in the sum of $100.00 for her personal appearance before the Superior Court, to be holden at Plymouth, within and for the County of Plymouth, on the first Monday of February next, then and there to prosecute her said appeal, and also in a like manner personally to appear at any subsequent sitting of said Superior Court, to which the case is continued, if not previously surrendered and discharged, and so from time to time, until the final sentence, order or decree of said Superior Court

[fol. 30] thereon and to abide such final sentence, order or decree, and not depart without leave, and in meantime to keep the peace and be of good behavior, and that she stand committed until this order be complied with.

And the Defendant complies with this order,—

Attest: Harry W. Sherburne, Assistant Clerk of said Court. (Seal.)

A true copy,—Attest: Harry W. Sherburne, Assistant Clerk of said Court.

In District Court of Plymouth County

Record of Appeal—No. 21071

Commonwealth

vs.

Sarah Prince

On complaint of George S. Perkins for custodian permitting unlawful Work of minor (Section 81, Chapter 149).

By virtue of a summons, duly issued, upon said complaint, a copy of which complaint is hereto annexed, the said Defendant is before the District Court of Brockton, at Brockton, in said County of Plymouth, on the fifth day of January A. D. 1942, and the said complaint is read to her and being asked whether she is guilty of the offence there charged, upon her says she is not guilty, and thereupon the further consideration of said complaint is by said court continued to the Nineteenth day of January A. D. 1942 at which last mentioned date after hearing divers witnesses duly sworn to testify the truth, the whole truth, and nothing but the truth, and fully understanding the defence of said Defendant, it is considered by said Court that she is guilty of the offence charged against her, it is therefore ordered by the said Court that the Defendant forfeit and pay the sum of Ten Dollars to and for the use of the City of Brock-[fol. 31] ton, and that she stands committed until said sentence be complied with.

And said Defendant was thereupon informed of her right to appeal.

From which conviction the said Defendant appeals to the Superior Court next to be holden at Plymouth, within

and for the County of Plymouth aforesaid, and is ordered to recognize to the Commonwealth in the sum of $100.00 for her personal appearance before the Superior Court, to be holden at Plymouth, within and for the County of Plymouth, on the first Monday of February next, then and there to prosecute her said appeal, and also in a like manner personally to appear at any subsequent sitting of said Superior Court, to which the case is continued, if not previously surrendered and discharged, and so from time to time, until the final sentence, order or decree of said Superior Court thereon and to abide such final sentence, order or decree, and not depart without leave, and in meantime to keep the peace and be of good behavior, and that she stand committed until this order be complied with.

And the Defendant complies with this order,—

Attest: Harry W. Sherburne, Assistant Clerk of said Court. (Seal.)

A true copy,—Attest: Harry W. Sherburne, Assistant Clerk of said Court.

IN SUPERIOR COURT OF PLYMOUTH COUNTY

DEFENDANT'S MOTIONS TO DISMISS AND/OR QUASH—Filed February 10, 1942

(THREE CASES)

And now comes the defendant in the above-entitled action and moves that the same be dismissed and/or quashed and assigns for cause the following:

1. That the complaints are invalid and do not state facts sufficient to constitute offenses under the law.

[fol. 32] 2. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the First Amendment to the Constitution of the United States for they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship of both the defendant and the minor child and thus violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

3. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Fourteenth Amendment to the Constitution of the United States, which Amendment had the effect of making said First Amendment applicable to the States, as they place unreasonable restraint upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship both as to the defendant and the minor child and thus are violative of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States.

4. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that they place unreasonable restraints on the exercise of Free Speech, Free Press, and Free Worship for they place children and minors under a certain age in an unreasonable classification.

5. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they deprive children under certain ages of the privileges and immunities of citizens of the United States contrary to the Fourteenth Amendment to the Constitution of the United States in that minor children under the ages as prescribed in the various sections are denied the unencumbered right of pursuing an occupation or calling, which occupation or calling is granted unencumbered to those who are above the ages as prescribed in the statutes.

[fol. 33] 6. With particular reference to General Laws Ter. Ed. Chapter 149 Section 79, said section is unconstitutional on its face and also as construed and applied in this case by reason that it punishes for failure to give evidence against one's self contrary to the Fifth Amendment to the Constitution of the United States.

7. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, cannot be applied to the facts in this case and therefore the defendant is Not Guilty on all complaints.

8. That there is insufficient evidence to warrant a finding of Guilty on any of the Complaints and therefore the defendant is Not Guilty on all the Complaints.

By Her Attorneys, Alfred A. Albert, Hayden Covington.

Endorsed: "Filed Feb. 10, 1942. L. Francis Callan, Jr. *Ass't. Clerk.*" "Feb. 10, 1942. (Hayes, J.) Motion denied. Deft's exceptions saved. L. Francis Callan, Jr., *Ass't Clerk.*

IN SUPERIOR COURT OF PLYMOUTH COUNTY

DEFENDANT'S MOTION FOR DIRECTED FINDING—Filed February 11, 1942

(Three Cases)

And now comes the defendant in the above entitled action and moves that the Court direct a finding in her favor on all three complaints, and assigns for cause thereof the following:

1. That the complaints are invalid and do not state facts sufficient to constitute offenses under the law.

2. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason [fol. 34] that they operate so as to violate the First Amendment to the Constitution of the United States for they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship of both the defendant and the minor child and thus violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

3. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Fourteenth Amendment to the Constitution of the United States, which Amendment had the effect of making said First Amendment applicable to the States, as they place unreasonable restraints

upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship both as to the defendant and the minor child and thus are violative of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States.

4. That Geenral Laws Ter Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that they place unreasonable restraints on the exercise of Free Speech, Free Press, and Free Worship for they place children and minors under a certain age in an unreasonable classification.

5. That General Laws Ter. Ed. chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they deprive children under certain ages of the privileges and immunities of citizens of the United States contrary to the Fourteenth Amendment to the Constitution of the United States in that minor children under the ages as prescribed in the various sections are denied the unencumbered right of pursuing an occupation or calling, which occupation or calling is granted unencumbered to those who are above the ages as prescribed in the statutes.

6. With particular reference to General Laws Ter. Ed. Chapter 149 Section 79, said section is unconstitutional on [fol. 35] its face and also as construed and applied in this case by reason that it punishes for failure to give evidence against one's self contrary to the Fifth Amendment to the Constitution of the United States.

7. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, cannot be applied to the facts in this case and therefore the defendant is Not Guilty on all complaints.

8. That there is insufficient evidence to warrant a finding of Guilty on any of the Complaints and therefore the defendant is Not Guilty on all the Complaints.

9. That upon all the evidence and the law taken in the most unfavorable light to the defendant, there is insufficient

evidence to warrant her conviction on any of the complaints.

By Her Attorneys, Alfred A. Albert, Hayden Covington.

Endorsed: "Filed Feb. 11, 1942. L. Francis Callan, Jr., *Ass't. Clerk.*" "Feb 11 1942 Motion denied and Exceptions noted Geo H W Hayes Justice of a Dist Ct presiding in Superior Ct under provisions of Acts 1923 Chap 469 and Amendatory Acts".

IN SUPERIOR COURT OF PLYMOUTH COUNTY

DEFENDANT'S REQUESTS FOR RULINGS—Filed February 11, 1942

(Three Cases)

And now comes the defendant in the above entitled cases and makes the following requests for rulings:

1. That upon all the evidence the defendant is Not Guilty.

2. That upon all the law the defendant is Not Guilty.

[fol. 36] 3. That upon all the evidence the Court must find that the cause of the defendant's arrest were the acts of the defendant and the minor child involved in engaging in their way of worship.

4. If the court finds that the cause of the defendant's arrest were the acts of the defendant and the minor child in that they were engaging in their way of worship, then the Court must rule that General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, do not apply to this defendant as the court should not impute to any legislation a purpose of action against religion.

Holy Trinity Church v. U. S., 143 U. S. 457.

5. That there is insufficient evidence to warrant a finding that the defendant was to receive or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines or other literature to the minor child.

6. If the Court should find that there is insufficient evidence to warant a finding that the defendant was to receive

or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines or other literature to the minor child, then the Court must find the defendant Not Guilty.

7. That upon all the evidence the Court must find that the defendant did not furnish magazines or other literature to the minor child for the purpose of having said minor child sell said magazines or other literature.

8. If the Court finds that the defendant did not furnish magazines or other literature to said minor child for the purpose of having said minor child sell said magazines or other literature, then the Court must find the defendant Not Guilty.

9. If upon all the evidence the Court should find that the defendant did furnish to Betty M. Simmons magazines or other literature for the purpose of having said Betty M. Simmons sell said magazines or other literature contrary to the law, then the Court must find the defendant Not Guilty as it is immaterial whether said Betty M. Simmons was to sell, distribute freely or receive contributions for said magazines or other literature.

[fol. 37] Lovell v. Griffin, 303 U. S. 444.

Hannon v. Haverhill, 100 Fed. (2) 82.

10. That there is insufficient evidence to warrant a finding that the defendant knew that the minor child, Betty M. Simmons, intended to sell magazines or other literature unlawfully.

11. If the Court should find that the defendant did not furnish Betty M. Simmons magazines or other literature knowing that said Betty M. Simmons intended to sell the same unlawfully, then the Court must find the defendant Not Guilty of the violation of General Laws Ter. Ed. Chapter 149 Section 80.

12. That there is insufficient evidence to warrant a conviction under General Laws Ter. Ed. Chapter 149 Section 79, and there is insufficient evidence to warrant a conviction under General Laws Ter. Ed. Chapter 149 Section 81.

13. That upon all the evidence and the law the Court must find that General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their

face and also as construed and applied in this case because they operate to deprive the defendant and the minor child of their rights of Free Speech, Free Press and Free Worship in contravention of the Due Process, the Equal Protection of the Laws and the Privilege and Immunities Clauses of the Fourteenth Amendment to the Constitution of the United States.

By Her Attorneys, Alfred A. Albert, Hayden Covington.

[File endorsement omitted.]

[fol. 38] In Superior Court of Plymouth County

Docket Entries

No. 21069. No. 21070. No. 21071

Date No.

1942

Feb. 2nd (1) Entered.

Feb. 10th (2) Defendant waives jury trial.

Feb. 10th (3) Defendant's motions to dismiss or quash filed and denied. Defendant's exceptions noted.

Feb. 11th (4) Defendant's motion for directed finding filed and denied. Defendant's exceptions saved.

Feb. 11th (5) Defendant's request for rulings filed.

Feb. 11th (6) Finding of guilty, (Hayes, J.) Defendant's exceptions saved.

Feb. 11th (7) Fine, $25.00, sentence suspended to February 19, 1942 (#21069).

Fine, $10.00, sentence suspended to February 19, 1942. (#21070-71).

Feb. 11th (8) Ordered to recognize personally in sum of $100.00.

Feb. 11th (9) Did so recognize personally in sum of $100.00.

Feb. 11th (10) Defendant's motion to extend time for filing bill of exceptions filed and allowed, (Hayes, J.)

Feb. 19th (11) Defendant's motion to extend time for filing bill of exceptions filed and allowed, (Hayes, J.)

Feb. 19th (12) Defendant's motion for stay of execution filed and allowed, (Hayes, J.)

Feb. 19th (13) Execution of sentence stayed.

Feb. 19th (14) Ordered to recognize in sum of $100.00, with surety, pending appeal.

Feb. 19th (15) Did so recognize in total sum of $300.00 with Helen A. White, Surety.

[fol. 39] Feb. 24th (16) Defendant's bill of exceptions filed.

Feb. 27th (17) Court certificate of reasonable doubt.

Feb. 27th (18) Allowance of motion for stay of execution revoked. Sentence suspended until June 16, 1942, (Hayes, J.) Notice sent.

Feb. 27th (19) Bill of exceptions disallowed, (Hayes, J.) Notice sent.

Mar. 20th (20) Defendant's motion to vacate order disallowing bill of exceptions and for a hearing on the bill of exceptions filed. Notice sent.

Mar. 30th (21) Defendant's motion to vacate order disallowing bill of exceptions and for a hearing on the bill of exceptions allowed, (Hayes, J.)

Mar. 30th (22) Defendant's motion to vacate order suspending sentence and for further stay of execution filed and allowed, (Hayes, J.)

Aug. 6th (23) Defendant's substitute bill of exceptions filed and approved, (Hayes, J.)

True copies. Attest:

L. Francis Callan, Jr., Ass't Clerk.

[fol. 40] In Superior Court of Plymouth County

Commonwealth of Massachusetts

(Three Cases) No. 21069 Cr. No. 21070 Cr. No. 21071 Cr.

Commonwealth of Massachusetts

vs.

Sarah Prince

Rescript from the Supreme Judicial Court for the Commonwealth—Filed February 17, 1943

No. 9726. Supreme Judicial Court for the Commonwealth
Q At Boston, Feb. 15, 1943

In the case of Commonwealth vs. Sarah Prince, pending in the Superior Court for the County of Plymouth

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz.,—

Defendant's exceptions sustained in the first case (under Sec. 79) and overruled in the other cases.

By the Court, Walter F. Frederick, Clerk.

February 15, 1943.
See opinion on file.

[File endorsement omitted.]

[fol. 40a] In Supreme Judicial Court of Massachusetts

Opinion

Qua, J.:

There was evidence tending to show the following: On the evening of the day named in each of these three complaints the defendant was on a public street in Brockton with her niece, one Betty M. Simmons, a girl in her ninth year, of whom the defendant was the custodian. Both the defendant and the child belonged to a religious sect known as "Jehovah's Witnesses" and as such regarded themselves as "ordained ministers" of God. Betty carried a "magazine bag" on which was printed "Watchtower ex-

plains the Theocratic Government" "5¢ a copy." In the bag were copies of the religious publications "Watchtower" and "Consolation." Betty held up a copy of each in her hand. She testified that she was "taking contributions" of five cents for each magazine, or more "if people should give more"; that she was not selling them; that on that night she did not receive any contributions or give any magazines away; that when she received "contributions" she gave all the money to the defendant; and that the defendant had given her the bag and the magazines. The defendant admitted at the trial that she had given Betty the bag and the magazines and testified that she told Betty "where to stand."

There was further testimony by the defendant and witnesses called by her to the effect that a person interested could obtain a copy of a magazine without paying the five cents; that the enterprise of distributing the magazines was not carried on for profit but was a religious and charitable enterprise; and that she and her children were on the street corner for no other reason "but to tell the people of the one place of safety, that is in the kingdom of God under Christ that we have prayed for."

[fol. 40b] There was also evidence from which it could have been found that on the evening in question the defendant, when asked by the supervisor of attendance to give him Betty's name, refused to do so, although she knew he was such officer and that he desired the name to aid in the enforcement of the law. There was evidence that the supervisor insisted that he did not already know Betty's name; that during the interview he said that he had a right to arrest the defendant; and there was evidence that on a previous occasion he had explained to her that it was against the law to allow children on the street selling magazines.

General Laws (Ter. Ed.) c. 149, § 69, as amended by St. 1939, c. 461, § 7, provides in part that "No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place." Section 77 provides that §§ 69 to 73 shall be enforced by supervisors of attendance and police officers and vests the former with "full police powers for the purpose." Section 79 provides in

part that any person "who refuses to give" to a supervisor of attendance "such information as may be required for the proper enforcement of sections sixty to seventy-four, inclusive, shall be punished * * *." Section 80 provides that "Whoever furnishes * * * to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive * * * shall be punished * * *." Section 81 provides that "Any * * * custodian having a minor under his con-
[fol. 40c] trol who * * * permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive * * * shall * * * be punished * * *."

One Perkins, supervisor of attendance of the schools of Brockton, made these three complaints against the defendant charging respectively that on December 18, 1941, at Brockton the defendant (first complaint, for violation of § 79) "did refuse to give to George S. Perkins, attendance officer of said Brockton, certain information, to wit: the name and age of Betty M. Simmons, a minor under the age of eighteen years, such information being required for the proper enforcement of the law"; (second complaint, for violation of § 80) "did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully"; and (third complaint, for violation of § 81) "was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law." Upon appeal to the Superior Court the complaints were tried by a judge without a jury, who found the defendant guilty on all three complaints.

The questions presented in various forms by the defendant's exceptions and argued before us are whether there was any evidence to warrant the findings that the defendant had violated the statutes as charged, and whether on their face, or as applied in these cases to the facts that could warrantably be found, the statutes underlying the three complaints are unconstitutional.

The defendant's contention that the statutes involved do not apply to her activities and those of Betty rests in gen-
[fol. 40d] eral upon the argument that these statutes were aimed at the regulation of street trades of well known types commonly carried on by children for money, and that they

were not intended to regulate the distribution without profit of religious publications by those who regard the spreading of their beliefs in this way as a command of God and hence as a religious and moral duty. We are not convinced that this contention is sound. By way of caution we must remember that the trial judge might not have accepted as wholly true the testimony of the defendant and her witnesses as to their religious beliefs or as to the philanthropic character of their undertaking. But if he accepted it in full, we still think a finding was warranted that the law had been violated. It is no doubt true in a broad sense that the statutes were directed at the regulation of certain ordinary street trades. But this will not justify us in excluding from their operation acts that come within their literal terms and that may involve the very evils intended to be curbed. To do this would be to rewrite the statutes and to insert in them exceptions which the Legislature could have inserted if it had desired that such exceptions should exist. The acts of the defendant could well be found to fall within the literal terms of the statutes and within the allegations of the complaints. Section 69, as amended, contains no exception as to religious magazines. Its words are "any newspapers, magazines, periodicals or any other articles of merchandise of any description." The judge could find that if a passerby should hand over five cents in accordance with the sign on the bag and should receive a magazine in return, a sale would be effected. The judge was not required to accept the defendant's characterization of that transaction as a "contribution." [fol. 40e] He could believe that selling the literature played a more prominent part in the enterprise than giving it away. He could find that the defendant furnished the magazines to Betty, knowing that the latter intended to sell them, if she could, in violation of § 69. There is nothing in that section that restricts its scope to selling with an ultimate net profit in view. There is nothing in any of the sections on which these complaints rest that requires an employment of the minor, in the sense in which the word employment is used in the law of master and servant, as a condition of criminal responsibility. The judge could find that the defendant permitted Betty to "work" in violation of § 81. The "work" mentioned in § 81, in so far as that section refers to § 69, is the selling, exposing or offering for sale prohibited by § 69, whether or not that is carried on under

a technical employment or for a wage. And, finally, we cannot say that the evils at which the statutes were directed attendant upon the selling by children of newspapers, magazines, periodicals, and other merchandise in streets and public places do not exist where the publications are of a religious nature. It seems apparent that they may or may not exist in particular instances according to the circumstances just as they may or may not exist in particular instances according to the circumstances where the selling is of publications of a secular nature. The defendant has called to our attention a number of decisions holding that variously worded statutes relating to peddlers and other vendors were not intended to apply to the activities of "Jehovah's Witnesses." Perhaps of these cases the one nearest to the present case is *State* v. *Richardson*, 27 Atl. [fol. 40f] (2d) 94 (N. H. 1942). But we cannot regard any of them as decisive of the true construction of our own statutes.

We are of opinion that these statutes as here construed do not infringe upon the constitutional guaranties of freedom of the press and of religion. Under our constitutional system freedom of the press and freedom of religion are rightly accorded a highly preferred position in the struggle of competing interests, but it does not follow that the channels through which these freedoms are exercised may not be affected and regulated in some degree by enactments under the constitutional powers of government designed to promote the public health, safety or welfare. The statutes under which these prosecutions are brought are derived from sections first enacted as part of St. 1913, c. 831. That statute was entitled "An Act to Regulate the Labor of Minors." Its title correctly indicates its content. It contains many sections obviously intended to protect children against hazardous occupations, to insure that they shall not be permitted to work in particular trades or processes or at hours considered detrimental to the health or morals of minors of various ages, and to secure proper school attendance. Certain sections are devoted to "Street Trades." These provisions belong to a type of legislation long regarded as within the duty of the State to protect the health, morals, and welfare of its people. *Commonwealth* v. *Hamilton Manuf. Co.*, 120 Mass. 383. *Commonwealth* v. *Riley*, 210 Mass. 387, affirmed, *Riley* v. *Massachusetts*, 232 U. S. 671.

Commonwealth v. *John T. Connor Co.*, 222 Mass. 299. *Muller* v. *Oregon*, 208 U. S. 412. There have been examples of such legislation in this Commonwealth for a century. [fol. 40g] See St. 1842, c. 60. We think that freedom of the press and of religion is subject to incidental regulation to the slight degree involved in the prohibition of the selling of religious literature in streets and public places by boys under twelve and girls under eighteen and in the further statutory provisions herein considered, which have been adopted as means of enforcing that prohibition. These cases are within the principle of such recent decisions as *Commonwealth* v. *Pascone*, 308 Mass. 591, 594-598, certiorari denied, 314 U. S. 641; *Cox* v. *New Hampshire*, 312 U. S. 569; *Valentine* v. *Chrestensen*, 316 U. S. 52; *Manchester* v. *Leiby*, 117 Fed. (2d) 661, certiorari denied, 313 U. S. 562; and *Busey* v. *District of Columbia*, 129 Fed. (2d) 24. Moreover, it would seem that the statutes as applied in the cases now before us are constitutional under all the opinions in *Jones* v. *Opelika*, 215 U. S. 584. The cases of *Lovell* v. *Griffin*, 303 U. S. 444, *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, *Schneider* v. *State*, 308 U. S. 147, and *Cantwell* v. *Connecticut*, 310 U. S. 296, upon which the defendant relies; seem to us distinguishable.

The defendant makes the further contention as to the first complaint (for refusing to give the attendance officer the name and age of Betty Simmons) that she is now to be punished for refusing to furnish evidence against herself. This contention requires examination. Article 12 of the Declaration of Rights of the Commonwealth provides in part that "No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself." In *Emery's Case*, 107 Mass. 172, at page 182, Mr. Justice Wells, speaking with [fol. 40h] the approval of all members of this court, said that the clause "or furnish evidence against himself" "may be presumed to be intended to add something to the significance of that which precedes." He continued, "Aside from this consideration, and upon the language of the proposition standing by itself, it is a reasonable construction to hold that it protects a person from being compelled to disclose the circumstances of his offence, the sources from which, or the means by which evidence of its commission, or of his connection with it, may be obtained,

or made effectual for his conviction, without using his answers as direct admissions against him. For all practical purposes, such disclosures would have the effect to furnish evidence against the party making them. They might furnish the only means of discovering the names of those who could give evidence concerning the transactions, the instrument by which a crime was perpetrated, or even the *corpus delicti* itself." He added that "Both the reason upon which the rule is founded, and the terms in which it is expressed, forbid that it should be limited to confessions of guilt, or statements which may be proved, in susbequent prosecutions, as admissions of facts sought to be established therein." There was no evidence that the defendant was asked Betty's age. Plainly her conviction on the first complaint was based solely upon her refusal to disclose Betty's name. It might be argued that Betty's name in itself had no tendency to incriminate the defendant, and was not an element of proof in the prosecution against her. On the other hand, the course of the evidence at the trial, including Betty's own testimony, made it clear that she was a witness who could, if the defendant were guilty, testify to every [fol. 40i] single element of proof necessary to convict the defendant on the second and third complaints. Moreover, by the terms of the statute upon which the first complaint is based the right of the supervisor of attendance to compel the defendant to answer his question was predicated upon the assumption that the answer was "required for the proper enforcement of sections sixty to seventy-four, inclusive." Under the circumstances of this case an answer to the question would have furnished to the Commonwealth ready means for producing all the evidence required to convict the defendant upon the second and third complaints. The supervisor of attendance was in effect asking the defendant to help him secure the Commonwealth's principal witness in order to prosecute the defendant. If the defendant can be convicted for not answering such a question, why could not a statute be enacted in effect requiring every person suspected of crime to furnish the police a list of all the witnesses whose testimony would convict him? We do not see how we can uphold the present conviction on the first complaint without overturning the construction of the Constitution given after careful consideration in *Emery's case*. We are not ready to take that step. *People* v. *Argo*, 237 Ill. 173. *People* v. *Spain*, 307 Ill. 283, 291. *People* v.

Newmark, 312 Ill. 625, 632. *State* v. *Farmer*, 46 N. H. 200, 202. *Counselman* v. *Hitchcock*, 142 U. S. 547, 585.

The result here reached under the circumstances of this case does not mean that a witness can refuse to testify to every fact, harmless in itself, which by any possibility might in the course of further investigation lead to the discovery of other facts and so finally to the unearthing of some evidence having a tendency to incriminate him. This [fol. 40j] decision rests upon the facts of this case and upon the direct connection between the question asked and the securing of the evidence required to convict upon the second and third complaints, so that here if the defendant had answered it could truly have been said that she herself had helped to furnish the incriminating evidence.

It does not necessarily follow from what has been said that the duty of keeping records of, or of disclosing, certain specified acts, or of disclosing the mere identity of the actor or of the instrumentality employed by him, imposed by certain statutes upon persons engaged in certain occupations or persons accepting licenses or others, where the duty is not dependent upon any criminal quality in the facts required to be recorded or disclosed, violates the Constitution. Thus statutes imposing a penalty upon the driver of a motor vehicle who goes away after an accident without making known his name and the number of his vehicle (see G. L. (Ter. Ed.) c. 90, § 24, as amended) have been held not to require self incrimination. *Ule* v. *State*, 208 Ind. 255. *Ex parte Knoedler*, 243 Mo. 632. *State* v. *Sterrin*, 78 N. H. 220. *People* v. *Rosenheimer*, 209 N. Y. 115. See *Commonwealth* v. *Horsfall*, 213 Mass. 232; *Opinion of the Justices*, 271 Mass. 582, 595-596; *United States* v. *Sullivan*, 274 U. S. 259; *United States* v. *Mulligan*, 268 Fed. 893. It would be impracticable to attempt at this time a full discussion of the possible distinctions. The subject is treated at large in Wigmore on Evidence (3d ed.) §§ 2259c, 2259d.

The result is that the defendant's exceptions are sustained in the first case (under § 79) and are overruled in the other cases.

So ordered.

[fols. 40k-42] COMMONWEALTH OF MASSACHUSETTS

Boston, May 27, 1943.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of Commonwealth vs. Sarah Prince decided on the fifteenth day of February, 1943.

(S.) Ethelbert V. Grabill, Reporter of Decisions.

Endorsed: "Filed in Superior Court for the County of Plymouth May 28 1943. George C. P. Olsson, Clerk."

[fol. 43] IN SUPERIOR COURT OF PLYMOUTH COUNTY

(Two Cases) No. 21070 Cr. No. 21071 Cr.

SARAH PRINCE, Appellant

vs.

COMMONWEALTH OF MASSACHUSETTS, Appellee

PETITION FOR APPEALS, STATEMENT, ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL.—Filed May 17, 1943

PETITION FOR APPEALS

Being aggrieved by the final decision and opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts, and the judgments of the courts below, in the above entitled causes, appellant herein prays that appeals be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

STATEMENT

In these cases the validity of statutes of the Commonwealth of Massachusetts are called in question as being unconstitutionally construed and applied to the facts and circumstances of these cases. The statutes read:

"(Massachusetts General Laws, Chapter 149, Section 80:) Penalty for Furnishing Articles to be Illegally Sold by Minors Engaged in Street Trades, or Aiding in Violation of Sections 69-73.—Whoever furnishes or sells to any

minor any article of any description with the knowledge that the minor intends to sell such articles in violation of any provision of sections sixty-nine to seventy-three, inclu- [fol. 44] sive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both. (1913, 831, sec. 22.)

"(Section 81:) Penalty on Parent or Guardian, etc.—Any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of any provision of section sixty to seventy-four, inclusive, or knowingly certifies to any materially false statement for the purpose of obtaining the illegal employment of such minor, shall for a first offense be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; and for a subsequent offense by a fine of not less than five nor more than twenty-five dollars or by imprisonment for not more than ten days, or both (1913, 831, sec. 23.)"

These statutes were duly passed and approved by the Legislature of the Commonwealth of Massachusetts, and are here drawn in question upon the ground that said statutes are repugnant to the First and Fourteenth Amendments to the United States Constitution. The Supreme Judicial Court of the Commonwealth of Massachusetts is the court of last resort in this cause in the Commonwealth of Massachusetts in which a decision could be had and the decision of that court is in favor of the validity of the said statute. Therefore, in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 (28 U. S. C. s 354)), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, [fol. 45] under Section 237 (a) of the Judicial Code (28 U. S. C. s344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

This cause came before the Supreme Judicial Court of Massachusetts on a Consolidated Bill of Exceptions arising out of the conviction of the appellant in the Plymouth Superior Court under three separate complaints, each charg-

ing a violation of one of the three sections of Chapter 149, Sections 79, 80 and 81 of the General Laws of Massachusetts. On February 15, 1943, the Supreme Judicial Court of Massachusetts rendered its decision and opinion herein, which decision sustained appellant's exceptions under the first complaint but overruled appellant's exceptions under the second and third, which latter two complaints are here involved. The opinion of the court has been officially reported and appears in the record in its entirety. (1943 Mass. Adv. Sheets 233.)

The orders overruling appellant's exceptions under the second and third complaints were entered in the office of the Clerk of Courts, Superior Court, County of Plymouth Commonwealth of Massachusetts on February 17, 1943.

Assignments of Error

Now comes the appellant in the above entitled causes and files herewith, together with said petitions for appeals, these assignments of error, and says that these are errors committed by the courts below in the records and proceedings of the above entitled causes and for the purpose of having the same reviewed by the United States Supreme Court makes the following assignments:

[fol. 46] (1) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in overruling appellant's exceptions under the second and third complaints herein because the statutes as construed and applied abridge and deny appellant's rights of freedom to bring up children in the nurture and admonition of the Lord and to direct the spiritual welfare of said children and their proper worship of Almighty God Jehovah as directed in His Word, contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in overruling appellant's exceptions under the second and third complaints herein because the statutes as construed and applied abridge and deny appellant's and her minor ward's freedom of speech, press, and worship of Almighty God Jehovah, contrary to the First and Fourteenth Amendments to the United States Constitution.

(3) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in failing to reverse the judgment

of the Superior Court of Plymouth County, because that court should have sustained appellant's motion to dismiss and/or quash the complaints.

(4) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in failing to reverse the judgment of the Superior Court for Plymouth County, because that court should have sustained the appellant's motions for directed findings filed at the close of Commonwealth's evidence.

(5) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in failing to reverse the judgment of the Superior Court for Plymouth County, because that court should have sustained appellant's motions for requested rulings filed at the close of all the evidence.

[fols. 47-85] PRAYER FOR REVERSAL

For and on account of the above errors appellant prays that the said findings and opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts and final judgment of the Superior Court, Plymouth County, Commonwealth of Massachusetts, hereinabove described in the above entitled causes be reviewed by the Supreme Court of the United States and reversed, and judgments rendered in favor of the appellant and for costs.

Alfred A. Albert, Hayden C. Covington. (S.) Alfred A. Albert by Hayden C. Covington, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 86] IN SUPERIOR COURT OF PLYMOUTH COUNTY

ORDER ALLOWING APPEAL

The appellant in the above entitled causes, having prayed for the allowance of appeals in these causes to the Supreme Court of the United States from the judgments made and entered in the above entitled causes by the Superior Court, Plymouth County of the Commonwealth of Massachusetts on the eleventh day of February 1942 (which judgments now stand affirmed by virtue of the overruling of her exceptions by the Supreme Judicial Court of the Common-

wealth of Massachusetts on February 17, 1943) and from each and every part thereof, and having presented and filed her petitions for appeals, assignment of errors, prayer for reversal and statement as to jurisdiction pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now ordered that appeals be and the same are hereby allowed to the Supreme Court of the United States from the Superior Court of Plymouth County Commonwealth of Massachusetts in the above entitled causes, as provided by law, and

It is further ordered that the Clerk of Courts, Superior Court, County of Plymouth, Commonwealth of Massachusetts shall prepare and certify to the transcript of the record, proceedings and judgments of these causes and transmit the same to the Clerk of the Supreme Court of the United States, together with all exhibits in original form as designated by pra-cipe filed with him, so that he shall have same in said Court within twenty (20) days from date, and

[fols. 87-93] It is further ordered that security for cost of appeals be affixed in the sum of five hundred ($500) dollars.

(S.) John P. Higgins, Chief Justice Superior Court of the Commonwealth of Massachusetts.

Dated, May 15, 1943.

[Endorsed:] "Filed in Superior Court for the County of Plymouth May 17, 1943, George C. P. Olsson, Clerk."

[fol. 94] In Superior Court of Plymouth County

Praecipe for Transcript of the Record—Filed May 17, 1943

To Honorable George C. P. Olsson, Clerk of Courts, Superior Court, County of Plymouth, Commonwealth of Massachusetts:

You will please prepare an authentic copy of the entire record filed in the above entitled causes, being in your court No. 21070 and No. 21071 of the Superior Court for Plymouth

County and No. 9726 of the Supreme Judicial Court of Massachusetts, for the purpose of filing appeals with the Clerk of the Supreme Court of the United States. The [fol. 95] records should contain the following documents:

1. All proceedings had in the Superior Court for Plymouth County, and the Supreme Judicial Court of Massachusetts, including all opinions herein.

2. Petitions for allowance of appeals to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

3. Jurisdictional Statement.

4. Order allowing appeal to the Supreme Court of the United States.

5. Statement of points to be relied upon in the Supreme Court of the United States.

6. Citation, signed by the Chief Justice of the Superior Court of the Commonwealth of Massachusetts.

7. Bond for costs on appeals to the Supreme Court of the United States.

8. Notice calling appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

9. This praecipe for transcript of the record.

10. All exhibits to be included by reference to the original documents.

Alfred A. Albert, Hayden C. Covington, by (S.) Alfred A. Albert, Hayden C. Covington, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 96] In Superior Court of Plymouth County

Acknowledgment of Service—Filed May 18, 1943

On behalf of the appellee in the above entitled causes, service is hereby acknowledged of copies of the record containing copies of the following documents, to wit:

1. Petitions for allowance of appeals to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

2. Jurisdictional statement.

3. Order allowing appeals to the Supreme Court of the United States.

4. Statement of points to be relied upon in the Supreme Court of the United States.

5. Praecipe for transcript of the Record.

6. Citation, signed by the Superior Court of the Commonwealth of Massachusetts.

7. Bond for costs on appeals to the Supreme Court of the United States.

8. Notice calling appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States Dated, May 17, 1943.

The Attorney General of the Commonwealth of Massachusetts, by (S.) William L. Macintosh, Assistant Attorney General, Counsel for Appellee.

[File endorsement omitted.]

[fol. 97] In Superior Court of Plymouth County

Docket Entries

No. 21069

Date	No.	
1942		
Sept. 24th	(24)	Copies of Record sent S. J. C. for Commonwealth. (Notice and copies sent to D. A. and Counsel.)
1943		
Feb. 17th	(25)	Rescript: Exceptions sustained (under Sec. 79), Feb. 15, 1943. (Copies sent.)

No. 21070

No. 21071

Date	No.	
1942		
Sept. 24th	(24)	Copies of Record sent S. J. C. for Commonwealth. (Notice and copies sent to D. A. and Counsel.)
1943		
Feb. 17th	(25)	Rescript: Exceptions overruled, Feb. 15, 1943. (See #21069.) (Copies sent.)

1943

Mar. 11th (26) Defendant's motion for stay of execution and intention to appeal to the Supreme Court of the United States filed. (Notice sent:)

May 17th (27) Defendant's petitions for appeals, statement, assignments of error and prayer for reversal filed.

May 17th (28) Defendant's statement as to jurisdiction filed.

May 15th (29) Order allowing appeal signed by John P. Higgins, Chief Justice; filed, May 17, 1943.

[fols. 98-99] May 17th (30) Defendant's statement of points to be relied upon filed.

May 15th (31) Citation to the Commonwealth of Massachusetts signed by John P. Higgins, Chief Justice; filed, May 17, 1943.

May 15th (32) Defendant's bond in $500.00 approved by John P. Higgins, Chief Justice; filed, May 17, 1943.

May 17th (33) Notice calling Appellee's attention to Paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States filed.

May 17th (34) Praecipe for transcript of the records filed.

May 17th (35) Acknowledgment of service signed by William L. Macintosh, Asst. Att.-Gen.; filed May 18, 1943.

[fol. 100] In Superior Court of Plymouth County

Commonwealth of Massachusetts

No. 21070 Cr. No. 21071 Cr.

Commonwealth of Massachusetts

vs.

Sarah Prince

Certification

I, L. Francis Callan, Jr., Assistant Clerk designated by the Superior and Supreme Judicial Courts, as further appears on the records of these Courts, to act for and in the absence of the Clerk, do hereby certify that the record in

the above cause states that the rescript from the Supreme Judicial Court of Massachusetts, dated February 15, 1943, was filed in this office on February 17, 1943; that the order allowing the appeal was signed by the Chief Justice of the Superior Court on May 15, 1943; that inasmuch as May 15, 1943 was a Saturday and the papers were forwarded to this office by mail from Boston, they were recorded and filed on Monday, May 17, 1943.

July 8, 1943.

L. Francis Callan, Jr., Assistant Clerk designated by the Superior and Supreme Judicial Courts to act for and in the absence of the Clerk. (Seal.)

[fol. 101] UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON—Filed June 17, 1943

Comes now appellant in the above entitled cause and states that the points which she intends to rely upon in the Supreme Court of the United States in this cause are as follows:

POINT ONE: The statute as construed and applied abridges and denies appellant's rights of freedom to bring up children in the nurture and admonition of the Lord and to direct the spiritual welfare of said children and their proper worship of Almighty God Jehovah as directed in His Word, contrary to the First and Fourteenth Amendments to the United States Constitution.

POINT TWO: The statute as construed and applied abridges and denies appellant's and her minor ward's rights of freedom of speech, press, and worship of Almighty God Jehovah, contrary to the First and Fourteenth Amendments to the United States Constitution.

[fol. 102] POINT THREE: The statute as construed and applied violates the "due process" and "equal protection" clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the jury to speculate, and amounts to a dragnet so as to deprive appellant of liberty without equal protection and due process of law.

POINT FOUR: There was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the words and actions of appellant.

Alfred A. Albert, Hayden C. Covington, Attorneys for Appellant.

PROOF OF SERVICE

STATE OF NEW YORK,
County of Kings, ss:

Affiant, undersigned, being of lawful age and duly sworn, says that he is a member of staff of law offices of Hayden C. Covington, of counsel for Appellant in the above entitled cause; that he served copy of Appellant's Statement of Points to Be Relied Upon in the Supreme Court of the United States on appellee's counsel by depositing said copy, securely enclosed in a sealed wrapper addressed to The Attorney General of the Commonwealth of Massachusetts, Boston, Massachusetts, and with postage fully prepaid therefor, in a United States Post Office at the City of New York, on the date hereinafter written.

George Jones.

Sworn to and subscribed before me this 16th day of June 1943. William K. Jackson, Notary Public, Kings County. Kings Co. Clk's No. 119, Reg. No. 62-J-5. Commission Expires March 30, 1945. (Seal.)

[fol. 103] UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed June 17, 1943

To the Clerk of the Supreme Court of the United States:

You will please print the entire record in the above captioned case now on file with your office, forwarded to you by the Clerk of the Supreme Judicial Court of Commonwealth of Massachusetts, except the following:

1. Citation, page 88.
2. Bond, page 89.
3. Power of Attorney, page 91.
4. Certificate, page 99.
5. Motion for stay, page 41.

6. Any other documents appearing to the Clerk to be unnecessary and immaterial.

Dated, June 16, 1943.

Hayden C. Covington, Attorney for Appellant.

[fol. 104] PROOF OF SERVICE

STATE OF NEW YORK,
County of Kings, ss:

Affiant, undersigned, being of lawful age and duly sworn, says that he is a member of staff of law offices of Hayden C. Covington, of counsel for Appellant in the above entitled cause; that he served copy of Appellant's within Designation of Parts of the Record to be Printed on appellee's counsel by depositing said copy, securely enclosed in a sealed wrapper addressed to The Attorney General of the Commonwealth of Massachusetts, Boston, Massachusetts, and with postage fully prepaid therefor, in a United States Post Office at the City of New York on the date hereinafter written.

George Jones.

Sworn to and subscribed before me this 16th day of June, 1943. William K. Jackson, Notary Public, Kings County. Kings Co. Clk's No. 119, Reg. No. 62-J-5. Commission Expires March 30, 1945. (Seal.)

[fol. 104½] [File endorsement omitted.]

[fol. 105] UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed June 22, 1943

To the Clerk of the Supreme Court of the United States:

Now comes the Attorney General of the Commonwealth of Massachusetts and, on behalf of the Commonwealth of Massachusetts, appellee in the above captioned case, respectfully requests that in printing "the entire record in the above captioned case now on file with your office, forwarded to you by the Clerk of the Supreme Judicial Court of the Commonwealth of Massachusetts" as designated by the appellant in her designation of 'Parts of The Record

to be Printed' you print in full the defendant's printed Substitute Bill of Exceptions, part of the record forwarded and certified to you in the above captioned case by the Clerk of the Superior Court of Plymouth, Commonwealth of Massachusetts.

Dated June 21, 1943.

The Attorney General of the Commonwealth of Massachusetts, by William L. Macintosh, Assistan Attorney General Counsel for Appellee.

[fol. 106] PROOF OF SERVICE

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

Affiant, undersigned, being of lawful age and duly sworn, says that he is a member of staff of the Attorney General of the Commonwealth of Massachusetts, of counsel for Appellee in the above entitled cause; that he served copy of Appellee's within Designation of Parts of the Record to be Printed on appellant's counsel by depositing said copy, securely enclosed in a sealed wrapper addressed to Hayden Covington, 117 Adams Street, Brooklyn, New York, and with postage fully prepaid therefor, in a United States Post Office at the City of Boston on the date hereinafter written.

William L. Macintosh.

Sworn to and subscribed before me this 21st day of June, 1943. Roger Clapp, Notary Public. (Seal.)

[fol. 107] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 11, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 47,590. Massachusetts, Superior Court, County of Plymouth. Term No. 98. Sarah Prince, Appellant, vs. Commonwealth of Massachusetts. Filed June 11, 1943. Term No. 98, O. T. 1943.